

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 443 of 1999
in

SPECIAL CIVIL APPLICATION No 7183 of 1998

with

CIVIL APPLICATION NO. 3790 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SUPERINTENDENT OF POST OFFICE

Versus

RAJABBHAI RAJABHAI SIPAI

Appearance:

MS P.J.DAWALA for Appellants

MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

Date of decision: 05/07/1999

ORAL JUDGEMENT

Admitted. Mr.P.H.Pathak appears and waives service of notice of admission on behalf of the respondents. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This appeal is filed against order of dismissal of Special Civil Application No. 7183 of 1999 by learned Single Judge as also dismissal of Misc. Civil Application No. 2774 of 1998 .

A petition was filed against an order passed by Central Administrative Tribunal, Ahmedabad Bench (hereinafter referred to as 'CAT'). It was placed for hearing before a Single Judge of this Court and the learned Single Judge dismissed the same.

When the LPA came up for admission, the Division Bench felt that in view of the observations made by the Supreme Court in L. Chandra Kumar vs. Union of India, AIR 1997, SC 1125 , a decision rendered by CAT can be challenged in High court by filing a petition under Articles 226/227 of the Constitution of India which can be heard only by a Division Bench.

Paras 92, 93 and 94 of L.Chandra Kumar's case (supra) read as under :

"We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals, to the Supreme Court under Article 136 of the Constitution. In view of our above mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court, the aggrieved party could move this Court under Article 136 of the Constitution.

Before moving on to other aspects, we may summarise our conclusions of the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional setup, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a

Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such case alone, the concerned High Court may be approached directly. All other decisions of those Tribunals rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Court. We may add that the Tribunals will, however, continue to act as the only Courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.

The directions issued by us in respect of making the decisions of Tribunals amenable to scrutiny before a Division Bench of the respective High Courts will, however, come into effect prospectively i.e. will apply to decisions rendered hereafter. To maintain the sanctity of judicial proceedings, we have invoked the doctrine of prospective over-ruling so as to not to disturb the procedure in relation to decisions already rendered."

In view of the above legal position, the petition could not have been placed for hearing by the office before the learned Single Judge and it could not have been disposed of by the learned Single Judge.

Hence, only on that ground, LPA is allowed. The order passed by the learned Single Judge in SCA as well as MCA are hereby quashed and set aside. Now, the office will place the main matter viz. SCA No. 7183 of 1998 before

a Division Bench.

We may state that as we are allowing LPA only on the ground that SCA could not have been disposed of by the learned Single Judge, we express no opinion on the merits of the case. As and when the matter is placed before appropriate Court, the Court will pass appropriate order without being influenced by the observations made by us hereinabove. LPA is accordingly disposed of. No order as to costs. No order on Civil Application.

parekh